

**5:03CV49-3-V**  
**(5:98CR289-V)**

**UNITED STATES OF AMERICA,**  
**Respondent.**

## ORDER

A review of the record reveals that on July 2, 2001 Judge Malcolm Howard, sitting as a visiting judge, sentenced Petitioner to a term of imprisonment of 120 months for possession of cocaine with intent to distribute following Petitioner's third jury trial.<sup>1</sup> The Fourth Circuit, in an unpublished opinion, affirmed Petitioner's sentence on March 20, 2002. Petitioner filed a certiorari

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petition in the Supreme Court on June 14, 2002. The Supreme Court denied certiorari on October 17, 2002.

\_\_\_\_\_ On April 18, 2003, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence alleging that his trial counsel was ineffective for: 1) failing to object to the judge's decision to declare a mistrial following his second trial; 2) for failing to raise a double jeopardy challenge at his third trial; 3) for failing to object to erroneous information in Petitioner's pre-sentence report; and 4) for failing to argue that Petitioner qualified for the safety valve provision set forth in 18 U.S.C. § 3553. In an eleven page Order dated July 26, 2006 this Court thoroughly addressed all of Petitioner's claims and denied Petitioner's Motion to Vacate (Document No. 24). On July 20, 2006 Petitioner filed a Motion for Reconsideration (Document No. 26) which this Court denied by Order dated August 1, 2006 (Document No. 27.) On August 11, 2006 Petitioner filed a second Motion for Reconsideration (Document No. 28) which this Court denied by Order dated August 16, 2006 (Document No. 29.) In the Court's Order denying Petitioner's Motion for Reconsideration, this Court invited Petitioner to appeal the Court's denial of his Motion to Vacate to the Fourth Circuit Court of Appeals. Clearly unhappy with the Court's denial of his Motion to Vacate and Motions for Reconsideration, Petitioner filed this instant Motion to Disqualify on August 18, 2006.

Petitioner has not supported his Motion to Disqualify with facts which indicate that this Court was or is biased. Petitioner only argues, in a conclusory fashion, that bias or prejudice are "assumed" because the issue before this Court is whether the Court complied with a particular rule of civil procedure in making a ruling. That is not the standard. Petitioner has not articulated any basis that would support the notion that this Court should recuse itself. Therefore Petitioner Motion for Disqualification is DENIED.

**SO ORDERED.**

Signed: August 21, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Richard L. Voorhees  
United States District Judge

